THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15802 of 1999

21.11.2007

Between:
Golla Sunkulamma, W/o.Chinna Pullanna

…Petitioner

And

The Revenue Divisional Officer, Kurnool
And another

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO
WRIT PETITION No.15802 of 1999

ORDER:

Petitioner is statedly owner of agricultural dry land admeasuring Acs.3.11 in survey No.121/1 situated at Cherukulapadu village of Veldurthy Mandal in Kurnool District. The land was acquired for provision of house site to poor persons under Award No.4/95 dated 19.4.1995. Petitioner alleges that the land is abutting the village site in the near proximity of the village and therefore the market value is Rs.2.00 lacs per acre. However first respondent awarded a sum of Rs.7,500/-. When the amount was paid on 09.1.1996 she received the same under protest and sent a representation on 10.1.1996 seeking reference to Civil Court, in vain. She therefore got issued a legal notice dated 21.9.1997 seeking reference. In response thereto first respondent sent letter bearing Rc.C.1133/94, dated 17.10.1997, informing petitioner that she did not send application under Section 18(1) of the Land Acquisition Act, 1894 (the Act, for brevity) seeking reference and that she gave her consent before the Mandal Revenue Officer (MRO) for fixing the market value at Rs.7,500/- per Sq.yard. Assailing the said communication, present writ petition is filed and a direction is also sought to respondents to refer the matter/Award to Civil Court under Section 18(1) of the Act.

First respondent filed counter affidavit opposing the writ petition. The case of respondents is as follows. Notification under Section 4(1) of the Act was issued on 05.4.1994 and the same was published in Kurnool District Extraordinary Gazette dated 18.4.1994. The substance of the same was published in the village by beat of tom-tom on 24.5.1994. Petitioner gave her statement before Mandal Revenue Officer (MRO), Veldurthy Mandal, Kurnool District, agreeing for

acquisition of land and to take compensation at Rs.7,500/- per acre as fixed by the Government. She did not attend the Award enquiry on 02.1.1995 and 20.3.1995 in spite of receiving notices. The Award was passed and compensation was paid. She accepted the compensation under protest but did not file any application seeking reference.

Learned Counsel for petitioner submits that when the compensation was paid on 09.1.1996, petitioner accepted the same under protest and therefore even if a representation was not sent earlier, the same does not amount to waiver of her right to seek enhancement of compensation. Nextly he contends that if any statement of petitioner, as alleged by petitioner, was recorded by the MRO, the same does not amount to consent Award. He points out that unless and until Award is passed in accordance with Andhra Pradesh Land Acquisition (Negotiation Committee) Rules, 1992 (the Rules, for brevity), Award cannot be consent Award. **Per contra**, learned Assistant Government Pleader for Land Acquisition reiterated the position of respondents as disclosed in the counter affidavit.

If a person has not filed representation within two months after receiving the notice of Award served under Section 12(2) of the Act, and such person receives compensation under protest, whether such person is barred from seeking reference under Section 18 of the Act?

Section 31 of the Act {as amended by Andhra Pradesh (Amendment) Act No.XXII of 1976}, deals with payment of compensation or deposit of the same in the Court. Second proviso to Section 31(2) of the Act lays down that no person who has received the amount of compensation otherwise than under protest shall be entitled to make an application under Section 18 of the Act. This provision fell for consideration before a Full Bench of this Court, to which I was a member, in **District Collector, Kakinada v P.Nagabhushana Rao**[1]. The Full Bench considered the reference made by a Division Bench in the following terms.

> … … … whether the claimants who failed to protest at the time of receiving the compensation can file application within the stipulated time seeking a reference to the Civil Court and whether acceptance of the amount without protest amounts to waiver of the right to seek reference under Section 18 of the Land Acquisition Act, 1894, we are of the view that the matter should be heard by a Full Bench.

Insofar as the second question in the reference is concerned, it was held as follows.

> Application has to be made within a period of six weeks from the date of award, if the person making the application was present or represented before the Collector at the time of

> making award. In other cases, application can be made within a period of two months from the date of service of notice from the Collector under Section 12(2) of the Act. In addition to these positive requirements, there is an embargo contained in the second proviso to sub-section (2) of Section 31 of the Act, which says that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18.

Insofar as the effect of second proviso under Section 31(2) of the Act is concerned, the Full Bench ruled as under.

> Result of conjoint reading of the second proviso to sub-section (2) of Section 31 and Section 18 of the Act is that an application seeking reference under Section 18 of the Act for determination of the amount of compensation can be made by any person interested, who has not accepted the award and who has not received the amount otherwise than under protest. The second proviso to sub-section (2) of Section 31 is couched in negative form and disables a person from seeking reference under Section 18 of the Act in case the amount of compensation is received by him otherwise than under protest. However, the Act nowhere lays down the method, manner or form in which protest has to be lodged by a person receiving the amount of compensation. On one hand right is conferred by Section 18 of the Act "on any person interested", who has not accepted the award to seek reference to the Court for determination of the amount of compensation, provided application is filed by him within the prescribed period. On the other hand, there is an embargo placed not by the same provision but by the second proviso to sub-section (2) of Section 31 of the Act on such a person, who has received the amount of compensation otherwise than under protest from making such an application for reference under Section 18 of the Act.

In this case admittedly when the amount was paid on 09.1.1996 petitioner received the same under protest and therefore her right to make reference stands in tact and has not taken away. The submission that the petitioner gave consent and therefore she is not entitled to compensation unless and until an Award is not passed under the Rules, and reference is maintainable even if a person appears before the MRO and gives statement.

The writ petition, with the above reasons, is allowed. First respondent is directed to consider the application/notice issued by petitioner and refer to Civil Court ignoring his communication dated 17.10.1997 sent to petitioner. This exercise may be completed within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

(**V.V.S.RAO, J**)

November 21, 2007
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[1] AIR 2004 AP 1 (FB)